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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 08/849,525      | 08/29/97    | LANZENDORFER         | G 435-WCG           |

HM22/0202

EXAMINER

VENKAT, J

ART UNIT

PAPER NUMBER

1615

14

DATE MAILED: 02/02/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

|                              |                                      |  |
|------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br><b>08/849,525</b> | Applicant(s)<br><b>LANZENDORFER ET AL.</b> |
|                              | Examiner<br><b>JYOTHSNA VENKAT</b>   | Group Art Unit<br><b>1615</b>              |

Responsive to communication(s) filed on Nov 17, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 8 and 11-17 is/are pending in the application.  
 Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 8, 11-13, 15, and 16 is/are allowed.

Claim(s) 14 and 17 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been  
 received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_.  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

Receipt is acknowledged of IDS , extension of time , change of address and amendment B filed on 10/7/99 and 11/17/99 .

Claims 9-10 have been canceled and claims 15-17 have been added as per applicants amendment . Claims 8 and 11-17 are pending in the application and the status of the application is as follows :

Applicants are notified that the foreign documents cited on PTO-1449 which were not considered by the examiner as applicants did not provide any translation .

The following new ground of rejection is necessitated by the amendment .

#### ***Claim Rejections - 35 U.S.C. § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. Claims 14 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 5,431,912 ('912).

See col.4 , lines 15-20 for " rutin , chrysin , kaempferol " which are the same to that claimed . See col.3 , formula II for the cinnamic acid derivative . Claims 14 and 17 are drawn to

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the formulations in the cosmetic art . The patent is also drawn to the same cosmetic art . The patent at col.2 , lines 10-16 discloses the polyphenol as individual components or mixtures thereof . See cols 350 et seq and see the examples . Note that the cinnamic acid derivative and antioxidants are optional . The expression “ comprising “ in the claims is inclusive of all the unrecited ingredients in major amounts .See Ex parte Gottzein et al. 168 USPQ 176 , and Ex parte Davis et al. 80 USPQ 448 .

Claims 8-13 , and 15-16 are allowed over the cited art .

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **J.VENKAT** whose telephone number is **(703) 308-2439**. The examiner can normally be reached on **MON-FRI from 9:30AM to 5:00PM**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **THURMAN K.PAGE**, can be reached on **(703) 308-2927**. The fax phone number for the organization where this application or proceeding is assigned is **(703) 305-3592**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is **(703) 308-1235**.

January 30, 2000

*J. Venkat*  
**J.VENKAT PH.D**  
**PRIMARY EXAMINER**  
**ART UNIT 1615**